

REPHRAIN

National Research Centre on Privacy, Harm Reduction
and Adversarial Influence Online

Using legal databases to study tech-enabled harms

Wednesday, 9th of March 2022

bristol.ac.uk



Who We Are



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Tech Abuse



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Policing



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This Masterclass will cover:

1. Background on our **research project** on tech abuse.
2. Overview of the **legal system** in England and Wales.
3. Introduction to **legal databases** such as Westlaw.
4. **Walk-through** to showcase to you how the databases work.
5. Explain their **relevance** to the REPHRAIN community
6. Hands-on **exercise** to get a feel for their usage.

(1) Background

Our Project:

The applicability of the UK Computer Misuse Act 1990 for cases of technology-enabled domestic violence and abuse

Technology-Facilitated Abuse

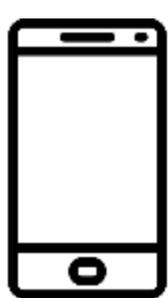


“Big Bucket”

Tech abuse includes:

- Excessive **text messaging**
- The use of **malicious software** so-called “stalker-/spyware”
- The deployment of (car) **trackers**
- The **impersonation** of an individual
- **Image-based abuse** offenses
- **Unauthorised access** to accounts/devices/systems
- ...

Range of **Devices**



National Stalking Helpline

100%

involve “**cyber**” element

However:
**Tech abuse is not a domestic
abuse/stalking offense *per se*.**

Common Legislation:
Criminal Justice Act 1988
Protection of Harassment Act 1997
The Serious Crime Act 2015
Criminal Damage Act 1971
Public Order Act 1986

Instead:

**Activities such as hacking into
someone's phone or installing malicious
software can fall under the
UK Computer Misuse Act 1990.**

Computer Misuse Act 1990



**5 Criminal Offences – Focused on
“Unauthorised Acts/Access”**

What we want to understand:

The **applicability** of the UK Computer Misuse Act 1990 onto cases of technology-facilitated domestic abuse/IPV

- Analyse the **nature and scope of tech abuse** cases that have been dealt with through the CMA in courts.
- Evaluate the possible **benefits and drawbacks** of deploying the CMA in the context of tech abuse cases (e.g., impact on sentence length).
- Examine the **technological enablers** of domestic abuse as well as victim/survivor and perpetrator characteristics.

And to do this:

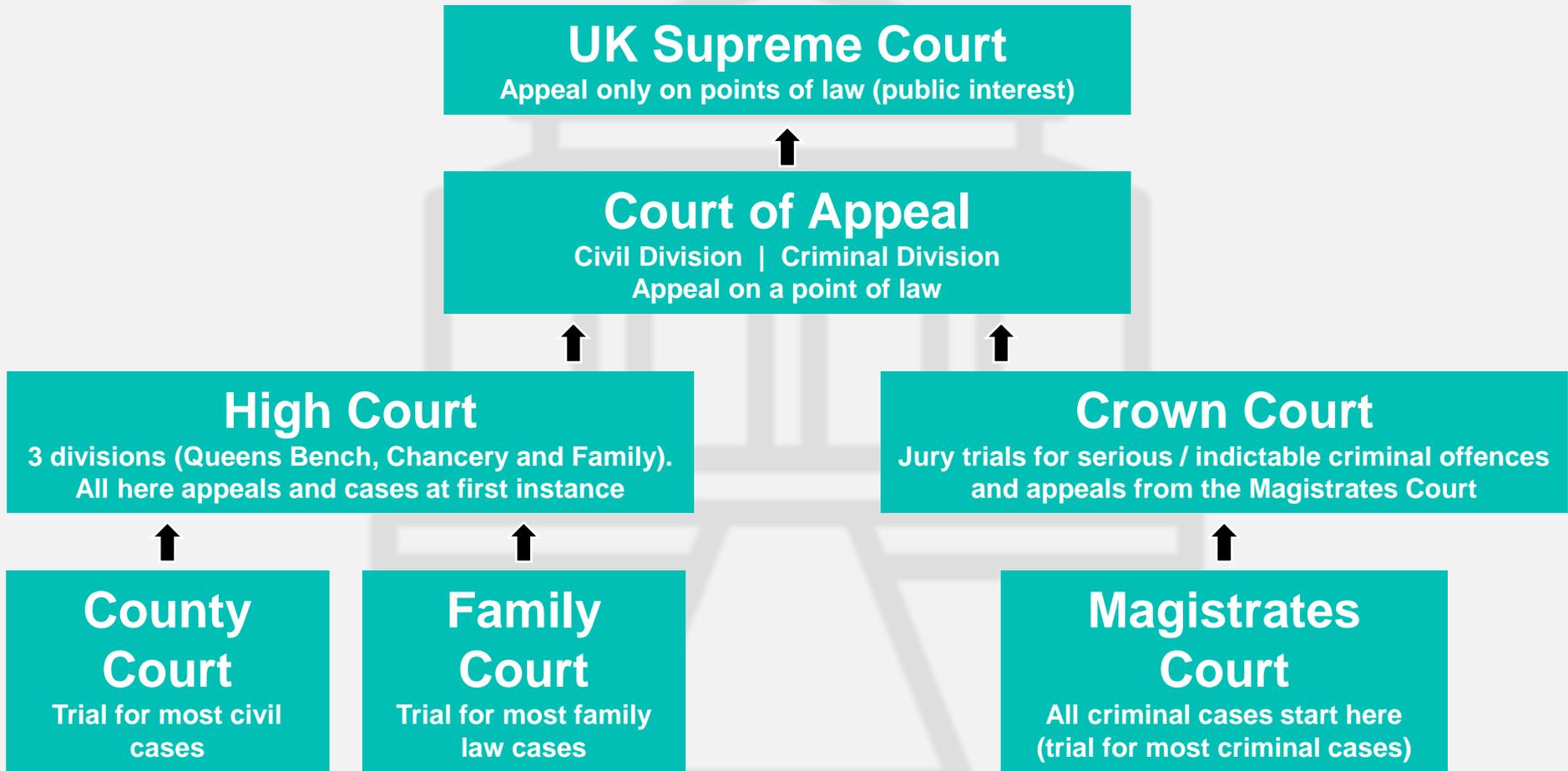
- Conduct a **systematic legal analysis** of court cases drawing on legal databases
- Pursue **one-to-one, semi-structured interviews** with academics and legal professionals (i.e., judges, barristers)
- Engage in a **news media analysis** of UK newspapers

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(2) Legal System

England and Wales



Individual vs. State

- **Criminal Cases** = Public / state prosecuting and individual in most cases (so individual vs. state) i.e., when the state prosecutes someone for an offence such as a robbery;
 - **Outcome:** Sentence / punishment or acquittal.
- **Civil Cases** = Private (individual vs. individual) i.e., an action for negligence or breach of contract. Family cases include child arrangements orders.
 - **Outcome:** Civil remedies include damages, injunctions, specific performance.

What laws apply?

- The **Crown Prosecution Service** (CPS) make the decision whether to prosecute. The police investigate an offence and, in most cases, simply pass on the evidence to the CPS to make a charging decision.
- There is a "**2 Stage Test**" which is used to decide whether to charge:
 1. Is there enough **evidence** that there is a reasonable chance of prosecution?
 2. Is it in the **public interest** to prosecute?

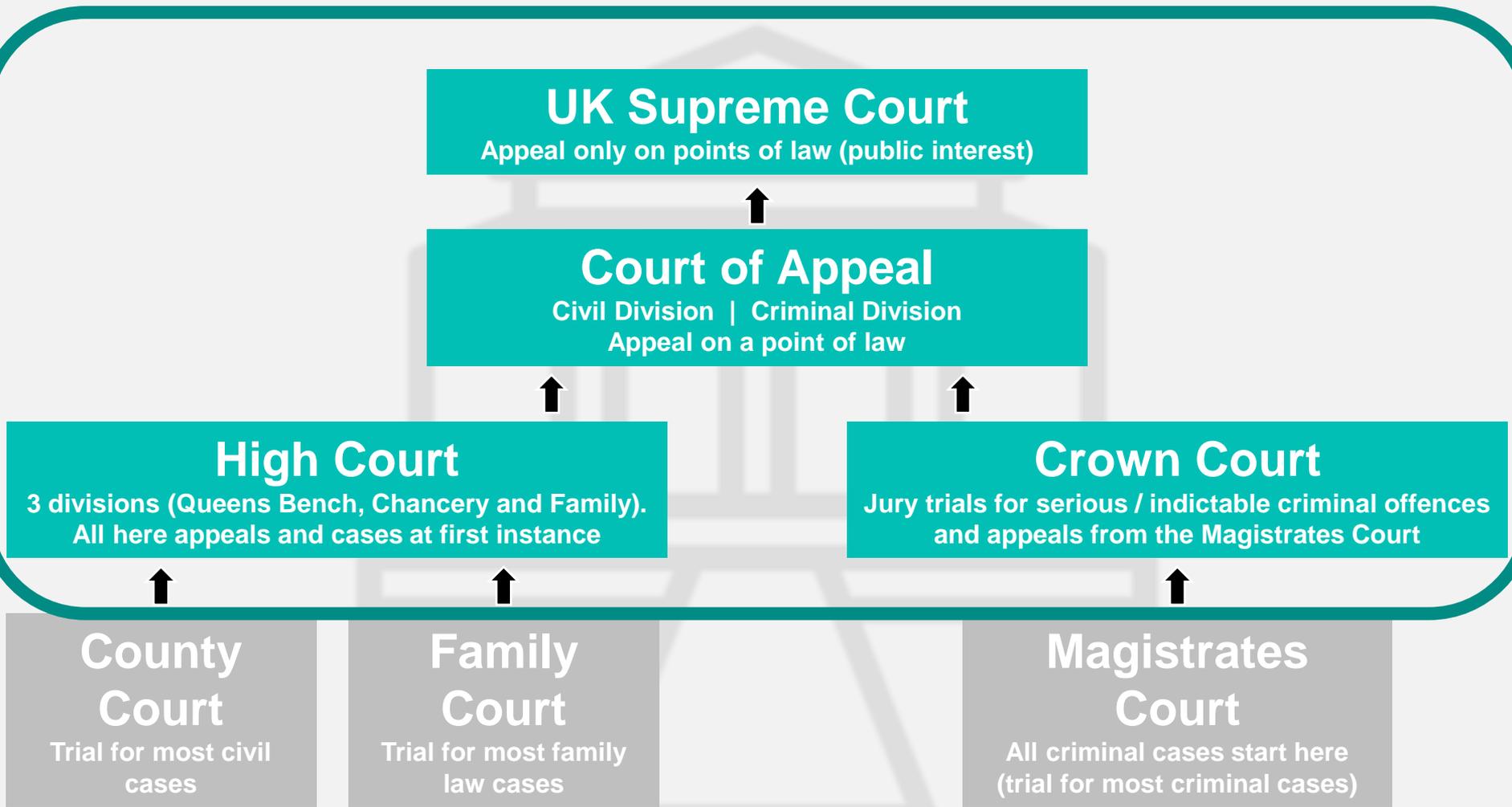
(3) Legal Databases

And to do this:

- Conduct a **systematic legal analysis** of court cases drawing on legal databases
- Pursue **one-to-one, semi-structured interviews** with academics and legal professionals (i.e., judges, barristers)
- Engage in a **news media analysis** of UK newspapers

The most common ones:

- **Westlaw**: Commercial – Paywall
- **LexisNexis**: Commercial – Paywall
- **British and Irish Legal Information Institute (Bailii)**: Charity – Open



The most common ones:

- Westlaw: Commercial

**Careful: Duplication of
cases across databases!**

- British and Irish Legal Information Institute
(Bailli): Charity

Terminology

- **Case Law:** A decision made on a case by a court (as opposed to legislation passed by Parliament)
- **Case Report:** Report of that decision made in court.
- **Judgement:** A judges' ruling on a particular point within the case or appeal.
- **Case Overview:** A summary of a case.
- **Law Report:** More than a judgement. Contains names of parties, dates, judges and courts.
 - Report often has summary of arguments before judgement.

(4) Walk-Through

What's on Westlaw?

Show less



Case Analytics

Next level research functionality to speed up cases research, uncover new insights and assist both case strategy and the preparation of arguments.



Legislation Comparison Tool

Quickly compare changes between any 2 versions of legislation across UK, English, Welsh, Northern Irish and Scottish jurisdictions.



UK-EU Divergence Tracker

Quickly and easily compare two of legislative text from retained legislation and EU legislation.

THOMSON REUTERS

WESTLAW EDGE UK

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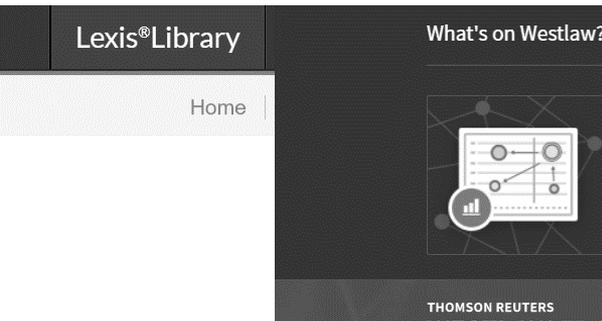
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BAILII - the Next 10 Years

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Dubai International Financial Centre judgments on BAILII

BAILII has added the judgments of the [Dubai International Financial Centre courts](#) from the judgments from the Qatar International Court and the Abu Dhabi Global Market courts



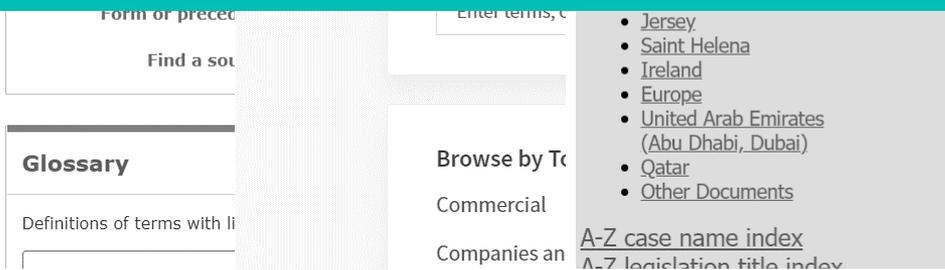
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Feel free to follow us through the database as we go along!



BAILII beta page design

See the [beta](#) version of a new BAILII home page.

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BAILII has added the judgments of the [Dubai International Financial Centre courts](#) from the [Dubai International Financial Centre](#). Judgments from the Qatar International Court and the Abu Dhabi Global Market courts are also available.

Our Findings So Far:

- Identified **390 results** from three legal databases, culminating in **184 cases** (January 2020 – October 2020).
- Tech abuse **continues to be prevalent and common** within the domestic abuse court cases we are analysing including via:
 - **Phone** (such as abusive text messages, phone calls, monitoring messages and contacts), **Social media**, **Recording devices**, **CCTV** in the home, and Threats to **release private sexual images**.
- The CMA 1990 **could have been applied** to various of the cases:
 - **Unauthorised access** to their partner's messages and social media accounts, and
 - **Manipulated** partner's social media account including deleting 'Facebook friends' and **impersonating** other men.

(5) Relevance

Why should the REPHRAIN community care?

- Understand **emerging trends** in crime facilitated by technology
 - How are legal cases portrayed in the legal system and how much detail is provided?
- Obtain an **abundance of information and context**
 - What are the different perpetration contexts or historical and geographical developments?
- See the **law in context**
 - What works how?

Why should the REPHRAIN community care?

- Stay **up-to-date** with legislation
 - LexisNexis has a traffic light system that shows the status of legislation and cases
- Possible **machine learning/NLP challenge** to scholars
 - How could the extraction/analysis of judgements/law reports be automated?



(6) Activity

Our Method:

- **Inclusion Criteria:** Firstly, that the cases were of relevance to domestic abuse; Secondly, that they took place in a court within England and Wales.
- **Search Term:** We used “Domestic Violence and Abuse” as our core search term across the three databases.
- **Evaluation Template:** Allows us to look at trends over time.

Looked at Westlaw from: 08.11.21 – 24.11.21

60 results (each result was a different case)

Some not available to access (9 cases) and some not in England and Wales (6 cases)

Final no. of cases = 45

Looked at Lexis Library from: 29.11.21 – 17.01.22

194 results (each result was not necessarily a different cases)

Some not in England and Wales (46 results) and same as on Westlaw (27 results)

Some results = the same case, so no. of extra documents of same case after included the first result as a new case (49)

Final no. of cases = 72

Looked at Bailii from: 18.01.22 – 12.02.22:

136 results (each result was not necessarily a different cases)

Some not in England and Wales (56 results) and same as on Westlaw or Lexis (17)

1. R. v Featherstone (Ashley Robert) Court of Appeal (Criminal Division) [2020] EWCA Crim 58 17 Jan 2020 **Unknown**
2. JH v MF (Child Arrangements: Domestic Abuse: Appeal) Family Division [2020] EWHC 86 (Fam) 22 Jan 2020 **Yes**
3. R. v Katira (Tarang) Court of Appeal (Criminal Division) [2020] EWCA Crim 89 29 Jan 2020 **Unknown**
4. R. Ritson (Krys) Court of Appeal (Criminal Division) [2020] EWCA Crim 152 5 Feb 2020 **Yes / Maybe**
5. R v B Family Division [2020] EWHC 1041 (Fam) 7 Feb 2020 **Maybe**
6. OA v Secretary of State for Education Queen's Bench Division (Administrative Court) [2020] EWHC 276 (Admin) 13 Feb 2020 **N/A**
7. R. v Sweeney (Sean John) Court of Appeal (Criminal Division) [2020] EWCA Crim 838 20 Feb 2020 **Yes**
8. R. v Grant (Quincy Jerome) Court of Appeal (Criminal Division) [2020] EWCA Crim 345 25 Feb 2020 **Unknown**
9. Depp v News Group Newspapers Ltd Queen's Bench Division [2020] EWHC 505 (QB) 6 Mar 2020 **Maybe / Unknown**
10. R. v Nicholson (Daniel Craig) Court of Appeal (Criminal Division) [2020] EWCA Crim

27. R. v Ellis (Lee Anthony) Court of Appeal (Criminal Division) [2020] EWCA Crim 992 3 Jul 2020 **Maybe (for a previous partner)**
28. R. v Chappell (Ryan Andrew) Court of Appeal (Criminal Division) [2020] EWCA Crim 903 7 Jul 2020 **Yes**
29. Z v D (Refusal of Return Order) Family Division [2020] EWHC 1857 (Fam) 14 Jul 2020 **Yes / Maybe**
30. R. v TG Court of Appeal (Criminal Division) [2020] EWCA Crim 939 14 Jul 2020 **Unknown**
31. R. v Reynolds (Jordan) Court of Appeal (Criminal Division) [2020] EWCA Crim 1024 14 Jul 2020 **Yes**
32. NP v A Local Authority Court of Appeal (Civil Division) [2020] EWCA Civ 1003 31 Jul 2020 **Unknown**
33. R. v Berry (John Paul) Court of Appeal (Criminal Division) [2020] EWCA Crim 1052 6 Aug 2020 **Unknown**
34. A Local Authority v M Family Court [2020] 8 WLUK 284 11 Aug 2020 **Yes**
35. W v Spain Divisional Court [2020] EWHC 2278 (Admin) 21 Aug 2020 **Unknown**
36. H (A Child), Re Family Court [2020] 8 WLUK 370 28 Aug 2020 **Unknown**
37. R. v Belcher (Scott) Court of Appeal (Criminal Division) [2020] EWCA Crim 1192 4 Sep 2020 **Unknown**

Summary Template (2020)

Cases combined from three legal databases:

Documents extracted from the following databases for the following cases:

- Cases 1 – 45 = Westlaw
- Cases 46–117 = Lexis Library
- Cases 118–184 = Bailii

- **Yes = Tech-abuse was involved.** [31 cases]
- **Unknown = Does not mention any specific involvement of tech-abuse in the documents.** [51 cases]
- **Maybe = Tech-abuse suspected to be involved.** [11 cases]
- **N/A = Not involving a case of domestic abuse.** [32 cases]
- **Case of Interest = A case of interest that needs to be investigated further.** [2 cases]
- **Yes / Maybe = [9 cases]**
- **Maybe / Unknown = [8 cases]**

16. X v Y Family Court [2020] 4 WLUK 378 26 Apr 2020 **Unknown**
17. R. v Hart (Stuart Richard) Court of Appeal (Criminal Division) [2020] EWCA Crim 716 28 Apr 2020 **Unknown**
18. A Local Authority v X Family Court [2020] EWHC 36 1 May 2020 **Unknown**
19. A City Council v M Family Division [2020] EWHC 947 (Fam) 7 May 2020 **Yes**
20. R. (on the application of Henry) v National Probation Service Queen's Bench Division (Administrative Court) [2020] EWHC 1246 (Admin) 13 May 2020 **Unknown**
21. AX v CY (Article 12: Settlement) Family Division [2020] EWHC 1599 (Fam) 10 Jun 2020 **Maybe**
22. R. v Gabriel (Gilbert) Court of Appeal (Criminal Division) [2020] EWCA Crim 780 11 Jun 2020 **Yes**
23. R. v Marsden (Damien) Court of Appeal (Criminal Division) [2020] EWCA Crim 1115 12 Jun 2020 **Unknown**
24. R.v Flanagan (Daniel Patrick) Court of Appeal (Criminal Division) [2020] EWCA Crim 1117 18 Jun 2020 **Yes / Maybe**
25. R. v Moses (Paul) Court of Appeal (Criminal Division) [2020] EWCA Crim 1169 25 Jun 2020 **Yes**
26. R. v MT Court of Appeal (Criminal Division) [2020] EWCA Crim 895 30 Jun 2020 **Unknown**

43. R. v Kimberlin (Clary) Court of Appeal (Criminal Division) [2020] EWCA Crim 2045 20 Oct 2020 **Yes**
44. R. v Edwards (Darren) Court of Appeal (Criminal Division) [2020] EWCA Crim 1444 16 Oct 2020 **Yes**
45. R. v Davey (Shaun) Court of Appeal (Criminal Division) [2020] EWCA Crim 1448 27 Oct 2020 **Unknown**
46. Q v Secretary of State for Justice – Employment Appeal Tribunal – 10 January 2020 – Judgments **N/A**
47. * In re AI M (Assurances and Waiver) – [2020] 1 WLR 1858 – Family Division – 17 January 2020 – Weekly Law Reports (ICLR) **Unknown**
48. JK v MK (E-Negotiation Ltd (trading as ‘amicable’) and Another intervening) – [2020] 1 FLR 1234 – Family Court – 20 January 2020 – Family Law Reports **N/A**
49. A local authority v M and others – Family Division – 24 January 2020 – Judgments **Yes / Maybe**
50. Regina (TP and another) v Secretary of State for Work and Pensions (Equality and Human Rights Commission intervening); Regina (TP and others) v Secretary of State for Work and Pensions (Equality and Human Rights Commission intervening) – [2020] PTRS 1785 – Court of Appeal – 29 January 2020 – ICLR: Public and Third Sector Law Reports* **N/A**

Tech Abuse – Our Codes:

- **Yes** = Tech abuse was involved
- **Unknown** = Does not mention any specific involvement of tech abuse in the documents
- **Maybe** = Tech abuse is suspected to be involved
- **N/A** = Not involving a case of domestic abuse
- **Case of Interest** = A case of interest that needs to be investigated further

Activity #1: **Bailii**

Case Name: A and B (No. 2) (SGO) (domestic abuse no direct contact to father) [2020] EWFC B15 (06 March 2020)

Activity #2: LexisNexis

Case Name: R v Dalgarno – CA, Criminal
Division – 25 February 2020

Activity #3: **Westlaw**

Case Name: General Medical Council v Saeed
Queen's Bench Division (Administrative Court)
[2020] EWHC 830 (Admin) 7 Apr 2020

Some questions for you:

- Who were the **judge(s)** in this case?
- What was the **sentence** in this case?
- What was the **decision**?
- Do you think **tech abuse** was involved?



1. **A and B** (No. 2) (SGO) [2020] EWFC B15 (06 March 2020)
2. **R v Dalgarno** – CA, Criminal Division – 25 February 2020
3. **General Medical Council v Saeed** Queen's Bench Division (Administrative Court) [2020] EWHC 830 (Admin) 7 Apr 2020

- Who were the **judge(s)** in this case?
- What was the **sentence** in this case?
- What was the **decision**?
- Do you think **tech abuse** was involved?

(7) Questions?

Leonie Tanczer
Francesca Stevens
Frances Ridout
Shane D Johnson

To learn more about **REPHRAIN** and how to get involved:



www.rephrain.ac.uk



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rephrain-centre@bristol.ac.uk

Thank you!

Additional Activity #4: **Bailii**

Case Name: AB v EM (Jurisdiction Foreign
Custody Order), Re [2020] EWHC 549 (Fam) (12
March 2020)